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12 UNITED STATES BANKRUPTCY COURT

13 NORTHERN DISTRICT OF CALIFORNIA

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15 In Re) Case No. 10-4-7902 RN 13
16 ROBERT BAKOVIC and) MOTION TO VALUE REAL PROPERTY
17 AMELA BAKOVIC,) AND TO VALUE FOURTH DEED OF TRUST LIEN
18 Debtors.) OF CHASE BANK AT ZERO DOLLARS
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25 Debtors, ROBERT BAKOVIC and AMELA BAKOVIC, by and through
26 their attorney move this Court for an order valuing at zero
27 dollars the fourth deed of trust lien of JP Morgan Chase Bank, NA
28 (Herein "Chase Bank") encumbering real property commonly referred
to as 4324 Omega Ave., Castro Valley, California. (Herein
referred to as the "Chase Bank Fourth Deed of Trust Lien") In
addition, Debtors will move the Court for an order treating any
claim filed by Chase Bank based on the Chase Bank Fourth Deed of
Trust Lien as an unsecured claim.

This Motion is made pursuant to 11 U.S.C. §506(a) and
Bankruptcy Rule 3102.

The Motion is based on the following:

1. Debtors filed a Chapter 13 Bankruptcy on July 13, 2010.

1 2. The debtors' real property at 4324 Omega Ave., Castro
2 Valley, California (Hereinafter referred to as the
3 "Residence") is encumbered by the following liens:
4 a) First Deed of Trust recorded in July 2003 in favor
5 of CitiMortgage in the amount of \$257,288.04;
6 b) Second Deed of Trust recorded in November 2004 in
7 favor of Ameriprise Bank FSB in the amount of
8 \$39,503.75;
9 c) Third Deed of Trust recorded in March 2006 in
10 favor of Wilshire State Bank in the amount of
11 \$181,556.76; and
12 d) Fourth Deed of Trust recorded on or about July 23,
13 2007 in favor of Chase Bank in the amount of
14 \$178,064.81.

15 3. The fair market value of Debtor's Residence is
16 \$445,000.00.

17 4. Debtor's Residence is worth less than what is currently
18 owed to the deed of trust holders, to wit,
19 CitiMortgage, Ameriprise FSB and Wilshire State Bank.
20 The liens of CitiMortgage, Ameriprise FSB and Wilshire
21 State Bank were recorded prior to, and therefore are
22 superior to, the Chase Bank Fourth Deed of Trust Lien.
23 The Chase Bank Fourth Deed of Trust Lien is entirely
24 "underwater," unsecured and of no secured value.

25 5. Any claim filed by Chase Bank predicated on the Chase
26 Bank Fourth Deed of Trust Lien is wholly unsecured.

27 6. The Chase Bank Fourth Deed of Trust Lien should
28 therefore be valued pursuant to 11 USC §506(a) and

1 Bankruptcy Rule 3012 at zero dollars. Any claim filed
2 by Chase Bank predicated on the Chase Bank Fourth Deed
3 of Trust Lien should be paid as a general unsecured
4 claim in Debtor's Chapter 13 Plan. See In Re Zimmer
5 313 F^{3d} 1220, 1222-1225 (9th Circ 2002).

6 7. The Ninth Circuit ruling in In re Zimmer allowing a
7 wholly unsecured junior lien claim to be stripped from
8 Debtors' principal residence is in harmony with all of
9 the other Circuit decisions which have considered the
10 issue. See In re Lane 280 F^{3d} 606, 615 (6th Circ.
11 2002); In re Tanner 217 F^{3d} 1357 (11th Circ. 2000); In
12 re Mann 249 BR 831 (BAP 1st Circ 2000); In re Bartee
13 212 F^{3d} 277 (5th Circ. 2000).

14 8. Bankruptcy Rule 3012 provides that the "valuation of
15 security" may be done by hearing after notice and
16 therefore valuing the lien at zero dollars by this
17 motion is in accord with Bankruptcy procedure.

18 WHEREFORE, Debtor prays for an order pursuant to 11 USC
19 §506(a) and Bankruptcy Rule 3012 as follows:

20 1. The real property at 4324 Omega Ave., Castro Valley,
21 California is valued at \$445,000.00;

22 2. The Chase Bank Fourth Deed of Trust Lien is unsecured
23 in its entirety and any claim predicated on the Chase
24 Bank Fourth Deed of Trust Lien shall be treated as an
25 unsecured claim;

26 3. The Chase Bank Fourth Deed of Trust Lien may not be
27 enforced pursuant to 11 U.S.C. §§506, 1322(b)(2) and
28 1327;

4. The Court's ruling on this Motion shall become part of

1 Debtor's confirmed Chapter 13 Plan.

2 5. Upon successful completion of Debtor's Chapter 13 Plan
3 and entry of a Chapter 13 Discharge, the Chase Bank
4 Fourth Deed of Trust Lien shall be voided for all
5 purposes and upon application by Debtor, the Court will
6 enter an appropriate form of judgment voiding the Chase
7 Bank Fourth Deed of Trust Lien.

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9 LAW OFFICES OF CRAIG V. WINSLOW

10 9/14/2010

/s/ Craig V. Winslow

11 Dated: _____

12 By _____
13 CRAIG V. WINSLOW
14 Attorney for Debtors